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Attorneys for Apple Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CORONAVIRUS REPORTER, CALID INC.,
PRIMARY PRODUCTIONS LLC, DR.
JEFFREY D. ISAACS, on behalf of
themselves and all others similarly situated

Plaintiffs,

v.

APPLE INC., FEDERAL TRADE
COMMISSION,

Defendants.

Case No. 3:21-CV-05567-EMC

**DECLARATION OF RACHEL S. BRASS IN
SUPPORT OF DEFENDANT APPLE INC.'S
MOTION TO DISMISS AMENDED
COMPLAINT AND MOTION TO STRIKE**

I hereby declare as follows:

1. I am an attorney licensed to practice in the State of California, and a member of the Bar of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record for Defendant Apple Inc. (“Apple”) in this case. I have personal knowledge of the facts stated below and, if called as a witness, I could and would testify competently thereto.

2. I provide this declaration in support of Apple’s Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted, and Apple’s Rule 12(f) Motion to Strike.

3. Attached to this Declaration as Exhibit 1 is a true and correct copy of the Apple Developer Agreement that was in effect as of March 2020, when Plaintiff Coronavirus Reporter’s app allegedly was rejected for distribution on the App Store, *see* Am. Compl. ¶ 53.

4. Attached to this Declaration as Exhibit 2 is a true and correct copy of current Apple Developer Program License Agreement. The Apple Developer Program License Agreement is publicly available at the following URL: <https://developer.apple.com/support/downloads/terms/apple-developer-program/Apple-Developer-Program-License-Agreement-20210607-English.pdf>.

5. Attached to this Declaration as Exhibit 3 is a true and correct copy of the App Store Review Guidelines, as amended on March 4, 2020, and filed publicly in *Epic Games, Inc. v. Apple Inc.*, No. 4:20-cv-5640-YGR (N.D. Cal.) (Dkt. 1 at page 147).

6. On September 16, 2021, Plaintiffs’ counsel Keith Mathews, Esq. wrote identifying proposed areas for further amendment. On September 20, 2021, I attended a Zoom meet and confer with Plaintiff Jeffrey Isaacs and counsel for Plaintiffs. At that meet and confer, Mr. Isaacs and counsel again stated—without having seen Apple’s forthcoming Motion to Dismiss the First Amended Complaint (“FAC”)—that they intended to seek to amend the FAC.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on September 20, 2021 at San Francisco, California.

/s/ Rachel S. Brass
Rachel S. Brass